IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01/04/2003

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THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL APPEAL NO.462 OF 2002 AND CRIMINAL APPEAL NO.722 OF 2002

Peer Mohammed .. Appellant in C.A.No.462/2002
S.Raju. .. Appellant in C.A.No.722/2002

-Vs-

State rep. by
The Inspector of Police,
Crime Branch, Crime Investigation
Counterfeit Currency Preventive
Cell, Chennai-2. .. Respondent in both the appeals.

Both the above Criminal Appeals under Section 374(2) of Cr.P.C as stated therein.

!For Appellant in
C.A.No.462/2002 : Mr.N.S.Sivam
for Mr.V.Sankaranarayanan
For Appellant in
C.A.No.722/2002 : Mr.N.Senthilkumar
for Mr.B.Pugalendhi.
^For Respondent in
both appeals: : Mr.A.N.Thambidurai,
Govt. Advocate (Crl.side)

:COMMON JUDGMENT

Both the above Criminal Appeals have arisen from and out of one and same judgment dated 27.03.2002 rendered in S.C.No.59 of 2001 by the Court of Additional Sessions Judge (III Fast Track Court), Chennai, thereby convicting and sentencing the first accused the appellant in C.A.No.722 of 2002 to undergo R.I. for 9 years and to pay a fine of Rs.10,000/- in default to undergo further R.I. for three months for the offences committed under Section 120B r/w 489 -B of the IPC and to undergo R.I. for 2 years for the offences committed under Section 120B r/w 489-C of the IPC and a sentence of R.I. for 9 years and to pay a fine of Rs.10,000/- in default R.I. for three months for the offences committed under Section 489-B of the IPC and a sentence of R.I. for 6 years for the offence committed under Section 489-C of the IPC.

Likewise, so far as it is concerned with the second accused, the appellant in C.A.No.722 of 2002, the trial Court has convicted and sentenced him to undergo R.I. for 9 years and to pay a fine of Rs.10,000/-, in default to undergo further R.I. for three months for the offences committed under section 120B r/w 489-B of IPC and conviction and sentence of R.I. for 6 years for the offences committed under Section 120B r/.w Section 489-C of IPC and further sentence of R.I. for 6 years for the offence committed under Section 489-C of IPC further ordering the sentences against both the appellants to run concurrently.

The appellant in C.A.No.462 of 2002 is the second accused and the appellant in C.A.No.722 of 2002 is the first accused and since, both the above appeals have been preferred against the above conviction and sentence respectively they are heard and are decided by this common judgment.

2. The first charge against both the appellants in the above Sessions Case is that on 17.11.1998 at about 11.00 a.m. at E.V.R.Road, Moore Market Bus Stop, on suspicion, the first accused was searched and found that he was in possession of six Counterfeit notes each of the denomination of Rs.100/- and on his examination it came to be known that he had paid one Veeriah of Rajapalayam a sum of Rs.10,000/- and had obtained the counterfeit notes to the extent of Rs.50,000/- in five bundles, which he handed over to the second accused on receipt of a sum of Rs.25,000/-; that the first accused also further obtained counterfeit notes for Rs.50,000/- from an elderly person at Sivakasi on payment of Rs.10,000/- and gave those counterfeit notes also to the second accused and on commission of such offences both the first and the second accused became liable to be prosecuted for an offence punishable under Section 120-B r/w Sec.489-B of I.P.C.

3. Secondly the first accused having distributed the counterfeit notes of 100 Rupees denomination with the second accused and the second accused having received the same they have both become liable to be prosecuted for an offence punishable under Sec.120-B r/w 489-C of I.P.C.

4. Thirdly, in the course of the same transaction, the first accused, having knowledge about the counterfeit notes and with intent to make use of the same as genuine currencies, entrusted the same with the second accused who was in possession of six such counterfeit notes of Rs.100/- denomination, and hence the first accused became liable to be prosecuted for the offence punishable u/s 489-A & 489 of the I.P. C.

5. Fourthly, on 18.11.1998 at about 4.45 p.m. at Washermanpet Vasar Varadapa Maistry Street, at Ennore Road junction, the second accused having given a sum of Rs.20,000/- as original currency to the first accused, the second accused obtained counterfeit notes for Rs.50,000/- of Rs.100/- denomination knowingly that they are counterfeit notes and with intent to make use of the same as genuine currency and being in possession of the same, the second accused became liable to be prosecuted for an offence punishable under Section 489-C of the I.P.C.

6. During trial, the prosecution, whose burden it is to prove the

case beyond all reasonable doubts, has examined 5 witnesses as P.Ws. 1 to 5, P.W.1 being the eye-witness to the occurrence, mahazar, arrest, seizure etc., P.W.2 being the court witness relating to the correspondence had between the court and scientific lab and marking through her Exs.P5 to P7; P.W.3, the Head Constable who carried the counterfeit notes to Nasic, P.Ws.4 and 5 the Investigating Officers of the crime.

7. The prosecution would also mark 12 documents as Exs.P1 to P12 and 9 Material Objects as M.Os.1 to 9. Among the exhibits marked, Exs.P1 and P2 respectively dated 17.11.1998 and 18.11.1998 being the mahazars in which P.W.1's signatures are found, Exs.P3 and P4 being Form No.95, Ex.P5 being the requisition of the Inspector of Police dated 5.5 .2000, Ex.P6 being the letter dated 13.6.2000, Ex.P7 being the report dated 1.8.2000 obtained from Nasic, Ex.P8 being the letter from the Nasic dated 10.7.2000, Ex.P9 being the admissible portion of the confession statement of the first accused, Ex.P10 being the admissible portion of the confession statement of the second accused, Ex.P11 being the seizure mahazar dated 18.11.1998 and Ex.P12 being the printed FIR dated 17.11.1998.

8. Among the material objects marked M.O.1 series are the Rs.100/- counterfeit notes numbering 6, M.O.2 series are the genuine currency of Rs.100/- denomination and 10 denomination, M.O.3 series are the visiting cards and these , three items have been recovered from the first accused and the items recovered from the second accused are M. Os. 4 to 8 series all respectively the counterfeit notes of the denomination of Rs.100/- and M.O.9 is the newspaper.

9. On the part of the accused the witnesses examined, the exhibits and material objects marked are nil.

10. In appreciation of these evidence placed on record and upon hearing the learned counsel for both, the trial Court has ultimately arrived at the conclusion to convict and sentence both the accused in the manner extracted supra, against which both the accused No.2 and 1 have respectively come forward to prefer the above Criminal Appeals on certain grounds as brought-forth in the grounds of appeals.

11. During arguments learned counsel appearing on behalf of the appellant in C.A.No.722 of 2002 would cite Ex.P1 mahazar, Ex.P2 FIR and such other materials like cross-examination of P.W.4 and would point out minor discrepancies in between Ex.P4 and the evidence of this witness regarding the arrest of the second accused; the learned counsel would also point out that the complainant himself has taken up the investigation; that P.W.1 is the only witness examined along with the investigating officer P.W.4; P.W.5 being one who laid charge sheet and the whole occurrence is revolving only around P.W.4 the investigating officer, without even the experts who identified the notes to be counterfeit notes being examined the charge sheet has been laid and the same cannot sustain in law since there is no evidence for the offence under Section 120-B r/w Section 489-B and 489-C of IPC.

12. The learned counsel would exhort that there must be the intention

to circulate and courts have held that unless and until the intention to circulate is brought out and established the charge under these Sections cannot be said to be made out.

13. The leaned counsel appearing on behalf of the first accused focusing attention on the charges classifying the same into three categories as in the charge sheet would submit that to the extent that the charges are magnified no materials have been brought-forth in evidence to consummate the charges. The learned counsel would also point out that A3 named in the FIR was arrested and throughout the investigation he was present and what happened to him ultimately so as to delete him in the charge sheet, the prosecution has failed to explain. If there is absolutely no materials about him, as it has been concluded on the part of the prosecution, why he should have been made an accused in the FIR and maintained as an accused throughout, has not been explained; that there is no iota of material placed before the court regarding the conspiracy hatched in between A1 and A2; that one Krishnadas P.w.1 speaks about the amount of Rs.50,000/- to have been supplied by the second accused, but those counterfeit notes have not been recovered; that the arrest of the first and second accused are said to have been respectively made on 17.11.1998 and 18.11.1998 and the counterfeit notes are alleged to have been recovered from them on the very same date of arrest which are unreliable.

14. The learned counsel would also cite certain judgments delivered by the upper forums of law in the past on legal propositions held every now and then and the first one of such judgdments cited on the part of the appellants is one from AIR 1931 Lahore 24 (Bur Singh V. Emperor Opposite Party) wherein it is held:
"it should be borne in mind that mere possession of forged notes is not an offence under the Indian Penal Code and in order to bring the case within the purview of Section 489-C of IPC. It is not only necessary to prove that the accused was in possession of forged notes but it should be further established (a) that at the time of his possession he knew the note to be forged or had reason to believe them to be so and (b) that he intended to use them as genuine or that they might be used as genuine."

15. The second judgment cited is one reported in AIR 1961 Patna 405 (Ragho Saran Sao V. The State) wherein it is held:
"For an offence under Section 489-C Penal Code it is essential to establish that the accused intended to use the forged notes as genuine and that they might be used as genuine.....sitting in his verandah all alone, it could not conclusively be inferred that, while possessed of the forged notes the accused also intended to use them as genuine and his conviction could not be upheld."

16. The third judgment cited on the part of the appellants is one reported in AIR 1979 SC 1705 (M.Mammutti, V. State of Karnataka) wherein it is observed:
"There is no evidence of any witness to show that the counterfeit notes were of such a nature or description that a mere look at them would convince any person of average intelligence that it was a counterfeit note.

Nor was any such question put to the accused under S.342 Cr.P.C. made before the committing Court the accused has made a statement different from that made in the Sessions Court and therefore the appellant had reason to believe that notes in his possession were counterfeit notes.....We are not able to find any inconsistency between the answer given by the accused in his statement under S.342 before the sessions Judge and that before the Committing Court specially on the point that the appellant had the knowledge or reason to believe that the notes were counterfeit.....No such evidence has been led by the prosecution to prove the nature of the notes also. In these circumstances, it is impossible for us to sustain the conviction of the appellant."

17. The next judgment is one reported in 1990 Crl.L.J.215 (Madan Lal sarma v. The State) wherein a Division Bench of the Calcutta High Court has held:
"Under Section 489-B. I.P.C. the burden is on the prosecution to prove that at the time when the accused was passing the note he knew that it was a forged one. The mere possession of it by him does not shift the burden to the accused to prove his innocent possession of the forged note. Similarly, under S.489-C, it is to be proved that the accused intended to use the forged or counterfeit currency note as genuine or it might be used as genuine. It is for the prosecution to prove the circumstances which would irresistibly lead to the conclusion that the accused had the intention to introduce surreptitiously the note on the public. Thus knowledge or reason to believe that the note was forged has to be proved to fix the liability under Ss. 489-B and 489-C. Unless it is found that the accused had the knowledge or reason to believe that the said questioned note was a forged one, the question of his palming it off as genuine could not arise."
18. The next judgment cited is one reported in 1997 Crl.L.J.3188 (Mohd.Yasin V. State of U.P. Opposite Party) wherein also a single Judge of the Alahabad High Court has applied the norms of the Division Bench of the Calcutta High Court in the earlier judgment reported in 199 0 Crl.L.J.215 for one and the same proposition of law.

19. The next judgment cited by the appellants is one reported in 200 1(4) Crimes 83 (SC) (Umashankar V. State of Chhattisgarh) wherein the Hon'ble Apex Court has held:
"Mens rea is very essential for conviction of economic offences u/ ss 489-B and 489-C 1860. These provisions are not meant to punish unwary users or possession of fake currency notes & bank notes."

20. The next judgment relied on by the appellants is one reported in 2001-1 L.W. (Cr.)230 (S.Chandran V. State rep. by Inspector of Police, Sivakasi Town Police Station, Virudhunagar District) wherein it is held:
"A bare reading of section 489-C would clearly indicate that there should be sufficient knowledge to the accused and he should have intention to use the same. Mere possession will not attract the offence under Section 489-C IPC."

21. The next judgment cited from 1995-1 L.W.(Crl.)74 (T.J.Mohan V. State by Inspector of Police, Tiruvllore Police Station) is also for one and

the same proposition of law by a single judge of this Court as held in the earlier judgment regarding knowledge and intention for Section 489-C is the essential ingredient.

22. The last judgment cited by the appellants is one from a single judge of the Punjab and Haryana High Court reported in 1982 Crl.L.J.32 (Bachan Singh and another V. The State of Punjab) wherein it is held:
"In order to bring a case within the purview of Section 489-C. I.P. C., it was not only necessary to prove that the accused was in possession of forged notes but it should further be established that: (a) at the time of his possession he knew the notes to be forged or had the reason to believe the same to be forged or counterfeit; and (b) he intended to use the same as genuine. Mere possession of forged or counterfeit notes is not an offence under the Penal Code."

23. On such arguments the learned counsel for both the appellants would pray to allow the above appeals setting aside the judgment of the lower Court.

24. In reply, the learned Government Advocate appearing on behalf of the State, the respondent in both the above Criminal Appeals would point out that 5 witnesses, 12 exhibits and 9 Material Objects have been examined and marked respectively on the part of the prosecution in proof of the commission of the offence by the appellants, P.W.1 is the eye-witness and he is the witness for the recovery mahazar, P.W.2 is the Court clerk speaking about the Exs.P3 to P8, P.W.3 being the Head Constable who carried the requisition to the Court and took the currency notes to Nasic for chemical examination, P.W.4 is the Inspector of Police who arrested the accused respectively on 17.11.1998 and 18.11.1998, prepared Ex.P12 FIR and did the investigation and it is P.W.5 who succeeded P.W.4 in office as the Inspector of Police laid the charge sheet on getting report from Nasic; that M.Os. 1 to 3 were recovered from A1 and M.Os. 4 to 9 were recovered from A2 by P.W.4. The learned Government Advocate would point out that these recoveries would speak volumes regarding the genuineness of the case of the prosecution. The learned Government Advocate would also point out that it is not mere recovery nor is it a case of the appellants merely being in possession of the counterfeit notes M.Os. 1 to 8 but both the accused have played vital roles in exchanging actual currency for obtaining the counterfeit notes from the parties. On such arguments the learned Government Advocate would pray to dismiss the above appeals.

25. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both what comes to be known is that both the above appellants are respectively the second and the first accused in the case registered by the respondent police in their Crime No.10 of 1998 for offences under Sections 120-B r/w 489-B, 120-B r/w 489-C and 489-B and 489-C against the first accused and the same sections except 489-B against the second accused and the trial Court having taken the case on its file in S. C.No.59 of 2001 and framing charges has ordered a thorough trial and has recorded the evidence let in by the prosecution with full opportunity for both parties to be heard during which 5 witnesses have been examined as P.Ws. 1 to 5, 12 documents have been marked

as Exs. P1 to P12 and 9 Material Objects have been marked as M.Os. 1 to 9 on the part of the prosecution with no evidence let in on the part of the defence and the trial Court framing proper point for consideration whether the prosecution has proved its case beyond all reasonable doubts and appreciating the evidence in the context of the facts and circumstances of the case would answer the point in the affirmative thus convicting both the appellants and sentencing them in the manner extracted supra.

26. Even though P.W.1 is the only independent witness examined in the case, this witness would speak to the entire facts and circumstances covering the whole case deposing to the effect that on 17.11.1998 at about 10.45 a.m. at EVR Periyar Road, Moore Market bus-stand when he was standing 8 or 9 police people came there and started examining an individual namely Raju; that the said Raju from his right pant pocket took out 6 counterfeit notes each of the denomination of Rs.100/- and then he also handed over 2 rupee notes and 10 rupee notes; that he signed the mahazar in which these recoveries were effected and would identify his signature which would be marked as Ex.P1.

27. P.W.1 would further depose that the said Raju is none but the first accused and he was answering the questions of the police during the course of which he stated that he would show the place from where he got the counterfeit notes and the persons from whom he received and further stated that he got counterfeit notes for Rs.50,000/- from one Peer Mohammed of Washermanpet and the confession was recorded which also P.W.1 would attest; that on the instructions of the police again the next evening at 3.45 p.m. he went to the police station and yet another person who signed mahazars and other documents also accompanied them along with the first accused Raju and when they approached the second accused he too admitted the receipt of the counterfeit notes to the extent of Rs.50,000/- and handed over the same with the police and they recovered them under the cover of a mahazar which was signed by the witness. The witness would also account for the counterfeit notes being kept in 5 bundles and on the top of those bundles which has been written as 8 CV; that he identified all the 5 bundles when they were shown to him in the Court to be the same bundles which were recovered from the second accused by the police; that the recoveries effected from the first accused would be marked as M.O.1 series, the recoveries effected from the second accused would be marked as M.O.2 series, the visiting cards marked as M.O.3 series, the signature of P.W.1 in the mahazar would be marked as Ex.P2. Through this witness also the other counterfeit notes would be marked as M.O.4 series to M.O.8 series and the newspaper which was covered on the bundles of counterfeit notes would also be marked as M.O.9.

28. This witness would also withstand the vigorous crossexamination by both the first and second accused and the defence does not seem to have gained anything from this witness excepting ultimately to put suggestions which would be conveniently denied by P.W.1 thus the defence ending up without any major impact made with this witness.

29. P.W.2 the Assistant of the Magistrate□s Court would depose to the effect that since there was no safety locker facility to kept the counterfeit notes,she entrusted them with the police asking them to keep them in their

custody and later keep them in the safety locker. M.Os. 3 to 8 would be marked through this witness. She would admit that no separate numbers have been allotted for each and every note for the purpose of identification.

30. P.W.3 the Head Constable would depose that on 5.5.2000 under the orders of the Inspector of Police, the counterfeit notes in Crime No.10/1998 were entrusted with his custody and thereafter examining the same the Magistrate concern entrusted them on 13.6.2000 being taken to Nasic and for having entrusted the same with the Nasic press he got acknowledgement, which would be marked as Ex.P9.

31. P.W.4 is the Inspector of Police who registered the case and investigated into and this witness would speak about that of reliable information on 17.11.1998 when he was watching the movements of suspects with his police party the first accused Raju was identified by the informant and he started examining him in the presence of witnesses Kristhtudass and Amstrong Raj; that in his right pant pocket he was having a plastic cover containing 6 chambers in which he was keeping 6 counterfeit notes each of the denomination of Rs.100/- and visiting cards and two genuine currencies of Rs.100/- denomination and one 10 rupee currency and all these items would be recovered by him under the cover of mahazar; that he also recorded his confession statement in the presence of the witness in which he revealed that paying a sum of Rs.10,000/- he got from one Veeraiah of Rajapalayam, counterfeit notes to the value of Rs.50,000/- contained in 5 bundles and bringing the same he sold them to A2 Peer Mohammed for a sum of Rs.25,000/- and that he was keeping the same notes for the model he had been arrested; that he also gave statement to the effect that he would identify those who are indulging in this trafficking; that on recording his confession statement pursuant to the admissible portion of which is Ex.P.9, A1 was brought to the police station and case in their Crime No.10/1998 under Section 489-B and 489-C was registered and thereafter on information they came to understand that the second accused having been arrested in P.E.W. Crime No.83/1998 under Section 4(1)(A) was released on bail on condition that he should appear before the PEW Police and on enquiries made with the PEW Police, the next day at 10.00 a.m. on being identified that evening by 4.45 p.m. he caused the arrest of the second accused and when examined in the presence of the witnesses he too gave a confession statement; that he admitted the receipt of the counterfeit notes of 5 bundles from the first accused Raju of Madurai and that he entrusted the same with the police and recording the confession statement along with the second accused and the witnesses, they went to his house in door No.69, Vasal Varadappa Street and took out the counterfeit notes of Rs.100/- denomination contained in 5 bundles covered in a newspaper and recovered the same under mahazar prepared at 5.30 p.m. attested by the witnesses which would be marked as Ex.P11 and the FIR would also be marked as Ex.P12 through this witness; that the recovered articles were all kept at Triplicane Police Station and remanding the first accused on 17.11.1998 to judicial custody, the second accused was remanded on 18.11.1998; that on retirement entrusting the case diary with the officer who succeeded him, he retired from service. This witness would also fairly withstand the cross-examination without allowing any major contradiction or inconsistency to occur. The 5th witness would speak of the further investigation of the case and examination of P.Ws.2 and 3 and

other witnesses and on verification of the records and diary completing the investigation would file the charge sheet on 11.10.2000 and only a formal suggestion would be put by the defence with this witness.

32. The trial Court having traced the facts pleaded on the part of the prosecution and having assessed the evidence placed on record through the witnesses and by means of the exhibits and M.Os. and having framed proper point for consideration and appreciating the case of the prosecution in evidence particularly having regard to the evidence of P.W.1 through which it comes to be known that on reliable information the police party had gone to the spot and the first accused on being identified by the informant they intercepted him and in the presence of the witnesses caused the recovery of M.O. series Nos. 1 to 3 further himself having confessed to the crime of having obtained the M.O series 4 to 8 wrapped with M.O.9 news paper consisting of 5 bundles of counterfeit notes each of which was of the denomination of Rs.10 0/- for a sum of Rs.10,000/- from one Veeraiah of Rajapalayam and pursuant to the admissible portion of the Ex.P9 confession statement, proceeded to the place of the second accused the next day that was on 18.11.1998 along with P.W.1 himself being identified by the informant and causing his arrest under the cover of the arrest memo and on recording his confession statement in Ex.P10 pursuant to which he recovered M.Os. 4 to 9 from the second accused and therefore, the trial Court has reason to consider the reliability of these evidences particularly the recoveries effected for which no other reasons have been attributed nor proved on the part of the defence. In these circumstances there is no point in doubting the fidelity of the case of the prosecution, particularly in view of the fact that the counterfeit notes recovered from the accused are bulk quantity which cannot be reasonably thought of having been made out by the prosecution nor any such suggestion even put-forth on their part and therefore, at this stage itself the trial Court has every reason to accept the case of the prosecution.

33. Further more, from M.Os. 1 to 8 and Ex.P7 report of the chemical analysis have also render supporting evidence to the case of the prosecution particularly providing the trial Court to have a comparative study of the genuine currencies with that of the counterfeit notes and therefore, the trial Court has reason to arrive at the unshakable decision that the accused have indulged in the offence contemplated under Sections 489-B, 489-C r/w 120-B of I.P.C. with knowledge that they were committing the crime and for obtaining wrongful gains and therefore, this Court is of the firm view that the trial Court has every reason to arrive at the conviction as it has arrived at in the case in hand and to sentence the accused with the punishments as awarded by the trial Court extracted supra.

34. The uniform case put up by the prosecution in a straightforward manner, the investigation done by the respondent so as to lay the charge sheet under the relevant sections of the I.P.C. particularly under Sections 120-B, 489-B and 489-C and the evidence let in during trial with P.W.1, who would adduce unshakable evidence regarding the entire occurrence right from the beginning till the recovery of the M. Os. 1 to 9 and the samples sent to Nasic for chemical analysis of the same and the report obtained clearly proving that the sample notes are counterfeit ones and on such evidence placed

on record it could only be held that the prosecution has put up a valid case and has proved the same to the standard of proof required by law that is beyond all reasonable doubts warranting the punishment prescribed by law.

35. The trial Court also having observed all the legal requirements with full opportunity for parties to be heard, has conducted a thorough trial into the facts and circumstances of the case and in recording of the evidence and appreciating the same within the norms of law has ultimately arrived at the conclusion to convict and sentence the accused in which, this Court is not able to find any serious legal error or infirmity or inconsistency or patent errors of law or perversity in approach and therefore the interference of this Court sought to be made by the appellants by means of the above Criminal Appeals into the well considered and well merited judgment of the trial Court is neither necessary nor called for in the circumstances of the case.

In result,
(i) both the above Criminal Appeals fail and they are dismissed;
(ii) the conviction and sentence passed by the Court of Additional Sessions Judge (Fast Track Court No.III), Chennai its by judgment dated 27.3.2002, in S.C.No.59 of 2000 is confirmed.

Index:Yes
Internet:Yes
gr.
To
1. The Additional Sessions Judge (Fast Track Court No.III), Chennai
2. The Public Prosecutor, High Court, Madras.